May 16, 1997

DOCKET FILE COPY ORIGINAL

William Caton, Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, DC

Ref: Petition for Reconsideration, PR Docket No. 92-235

Dear Mr. Caton:

Enclosed herein, please find an original and four copies of a Petition for Reconsideration of the Second Report and Order in the above referenced proceeding.

Very truly yours,

Robert J. Speidel, Esq.
Manager, Regulatory Programs
Private Radio Systems

RJS:bs

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
and	)	
Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services	)	

To: The Commission

Petition For Reconsideration
by Ericsson Inc.
to the
Second Report and Order

Ericsson Inc. takes this opportunity to compliment the Federal Communications Commission for its efforts in the "Refarming" proceeding. Ericsson believes that the majority of the decisions made by the Commission will have a positive effect on the private land mobile community. Ericsson, nevertheless, suggests that there are some areas of the *Second Report and Order (Second R&O)* that require additional consideration, as described below.

Trunking in the PLMR Bands Below 800 MHz

The Commission's decision to allow trunking in the bands below 800 MHz at this time, even though the Commission has not reached a decision on "exclusivity" is noteworthy.

However, the requirements adopted to allow trunking only when **all** co-channel and adjacent channel licensees within certain geographical areas of the base stations concur are overly restrictive and essentially preclude the realization of any benefits associated with trunking.

The major problem with the adopted rules concerns the percentage of co-channel and adjacent channel licensees that must concur in any trunking request below 512 MHz. Requiring **unanimity**[1] among all licensees does not account for the very real probability that just **one** user, either for reasons it has no obligation to disclose or at the behest of others, will not concur. More than just a few co-channel and adjacent channel licensees should be required to inhibit deployment of efficient technologies. Instituting a majority rule would result in a faster transition to trunking. Ericsson suggests adopting a rule requiring only the concurrence of licensees constituting a **simple majority** of the authorized co-channel and adjacent channel subscriber units. This would preclude one licensee or a small group of licensees from blocking the introduction of competing advanced technologies and/or using the need for their concurrence to extract unreasonable payments from licensees wanting to deploy these competing advanced technologies. These holdouts should, however, be entitled to reasonable compensation equal to the cost of moving their equipment to an alternate channel, if relocation is required.

Ericsson understands that the matter of channel exclusivity remains an unresolved issue in the *Further Notice of Proposed Rule Making* in this proceeding.[2] Exclusivity is, however, inextricably intertwined with facilitating the deployment of many spectrally efficient advanced technologies. Without the assurance of channel exclusivity for these advanced technologies, it will be difficult for licensees to justify the investments necessary to implement these technologies. A licensee who chooses to deploy advanced technologies should be able to apply for and receive channel exclusivity. Ericsson implores the Commission to resolve the exclusivity issue as expeditiously as possible.

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[1] *See,* Second Report and Order at paragraph 58.

[2] *See,* Report and Order and Further Notice of Proposed Rule Making, FCC Docket 92-235, 10 FCC Rcd 10076 (1995), at paragraphs 118-135.

In addition to the discussion immediately above regarding the percentage of co-channel and adjacent channel licensees that must concur with any trunking request below 512 MHz, and independent of such discussion, Ericsson suggests that the "70 mile plus contour overlap" provisions included in the adopted rules are too restrictive. In the 800 and 900 MHz bands, stations can be placed as close as 55 miles without any rule waivers or concurrence from co-channel licensees.[3] Ericsson recommends that the trunking request concurrence mileage requirement provisions be changed to no more than 55 miles.

Unintended Bias Against Spectrally Efficient "or Equivalent" Systems

As noted previously, the Commission's decision to embrace trunking and similar technologies on the 'Refarmed" channels provides a tremendous step forward.[4] The decision effectively allows 12.5 kHz or 6.25 kHz trunked equipment on the newly added narrowband channels, without the possibility of being blocked by those who continue to operate 25.0 kHz equipment.[5] When and if 6.25 kHz equipment begins to operate on adjacent channels, the Commission's decision will, however, from a practical standpoint, make it difficult to deploy 25 kHz or 12.5 kHz equipment even if such equipment has greater spectral efficiency than such 6.25 kHz equipment. This is true because **all** 12.5 kHz and 25 kHz systems wanting to trunk and regardless of such equipment's spectrum efficiency, must obtain the concurrence of **all** co-channel and adjacent channel licensees, and the rules do not prevent any co-channel or adjacent channel licensee from refusing to concur without reason, explanation, and/or compensation.

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[3] *See*, 90.621(b)(4).

[4] *See generally*, Second Report and Order at paragraphs 56-59.

[5] The new rules provide that concurrence from existing users is required from all licensees whose service areas overlap a 70 mile circle from a trunked base station in the following cases: 1) for 25.0 kHz trunked systems with operating frequencies within 15 kHz of the operating frequency of an existing user, or 2) for 12.5 kHz trunked systems operating within 7.5 kHz of an existing user, or 3) for 6.25 kHz trunked systems operating within 3.75 kHz of an existing user.

However, any licensee proposing to use **any 6.25 kHz equipment**, even though such 6.25 kHz system may be significantly less spectrally efficient than the adjacent channel systems, **is not required to obtain the concurrence of any adjacent channel licensee** in order to trunk. This difference in treatment is an unintended disincentive against using the most spectrally efficient equipment once 6.25 kHz equipment is fielded, and it suggests that the rules adopted are contrary to the Commission's goal of maintaining technology neutrality in all rulemakings. Ericsson recommends strongly that this unintended technology bias be removed. One simple way to remove the bias would be to allow trunking only on those channels which are the same as the original 25 kHz channels and those channels offset 12.5 kHz from the original 25 kHz channels. Alternatively, the solution could be to require a licensee proposing to utilize a 6.25 kHz trunked system, particularly if the system will operate on channels that are offset 6.25 kHz from the original 25 kHz channels, to obtain the concurrence of adjacent channel 12.5 kHz bandwidth licensees whose operating frequency is located within 7.5 kHz of the operating frequency of the proposed 6.25 kHz system, when such 12.5 kHz licensee meets the efficiency standard of at least one talk path for each 6.25 kHz of bandwidth occupied.

Eligibility - Industrial/Business Pool

Ericsson seeks reconsideration of the discussion in the *Second R&O* concerning the potential reclassification from private mobile radio service (PMRS) to commercial mobile radio service (CMRS) for the non-public safety private radio services as a result of pool consolidation.[6] The Commission suggests that this matter needs to be considered in a further proceeding. Ericsson disagrees. This matter was well resolved in the *Second Report and Order* in GN Docket No. 93-252 and should not be reopened.

[6] *See*, Second Report and Order at paragraph 28.

Most of the thousands of private radio land mobile users in the bands below 800 MHz are not entrepreneurs in the telecommunications field who provide commercial services. Two-way radio provides a means for these companies to be more productive in their primary business activities. Few would even embrace the opportunity to become telecommunications entrepreneurs. Companies become licensed in the private radio services largely because they have needs that cannot be met by use of commercial telecommunications carriers. The majority of these entities are not interested in becoming common carriers.

Ericsson does not believe Congressional intent required the Business Radio Service be reclassified as CMRS when the Commission previously considered the issue in GN Docket 93-252, nor do we believe reclassifying essentially everything other than Public Safety as CMRS was ever contemplated by Congress. Some years ago Congress acted specifically to remove private radio applications from a public notice requirement for CMRS applications. This indicates it would be contrary to Congressional intent to take any action that would reestablish such a requirement.

As noted above, one impact a reclassification to CMRS would put on non-public safety private land mobile applicants is the 30 day public notice requirement for applications.[7] This requirement facilitates virtually anyone filing frivolous, non-meritorious petitions to deny applications without fear of sanctions. Extensive delay in issuing licenses for no valid reasons whatsoever could become commonplace. The issues that concern the Commission such as interference can and are addressed through the coordination process. Once the coordination process has been followed, adding a 30 day public notice requirement for private land mobile applicants brings nothing meritorious to the table. Subjecting private land mobile radio to the 30 day public notice requirement for applications will not result in any beneficial improvement.

The private land mobile services have served the needs of industry well for nearly 70 years. Ericsson urges the Commission to recognize that private radio services contribute to the

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[7] *See*, 47 CFR § 309(b).

overall health of the economy and major changes in the regulatory status of the services is not necessary.

Conclusion

The Commission has come very close to putting the final touches on Refarming. This has been one of the most difficult private land mobile proceedings in history. After all of the work by the Commission and by the industry, the remaining issues must be decided properly and promptly for the entire package to work successfully. Ericsson has suggested that: 1) the concurrence requirements from existing co-channel and adjacent channel licensees are unnecessarily restrictive, and 2) channel exclusivity must be provided, and 3)full realization of the benefits of advanced technologies on the "Refarmed" channels may be impeded by an unintended technology bias in the rules adopted, and 4) the Industrial/Business pool could be injured in an unintended way if reclassified as CMRS and no further proceedings on that subject should be instituted. Ericsson Inc. requests that the Commission reconsider its decisions in these areas and adopt positions more consistent with those suggested in this petition.

Respectfully submitted,

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